

**United States Department of Labor
Employees' Compensation Appeals Board**

T.P., Appellant

And

**U.S. POSTAL SERVICE, GENERAL MAIL
FACILITY, Philadelphia, PA, Employer**

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**Docket No. 07-60
Issued: May 10, 2007**

Appearances:

Jeffrey P. Zeelander, Esq., for the appellant

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On October 12, 2006 appellant filed a timely appeal from a September 27, 2006 Office of Workers' Compensation Programs' merit decision, denying modification of its termination of appellant's compensation and medical benefits. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the claim.

ISSUE

The issue is whether the Office met its burden of proof to terminate appellant's compensation and medical benefits.

FACTUAL HISTORY

This is the fourth appeal to the Board. On October 29, 2004 and December 1, 2005 the Board remanded the case for further development on the issue of whether the Office properly followed its procedures in selecting the impartial medical specialist.¹ The Board instructed the Office to issue an appropriate merit decision in order to preserve appellant's appeal rights. The Board set aside Office decisions dated June 9, 2003 and June 3, 2005 that denied modification of its termination of appellant's compensation and medical benefits. On July 16, 2003 the Board remanded the case for reconstruction of the case record.² The October 29, 2004 and December 1, 2005 orders of the Board are herein incorporated by reference.

By decision dated September 27, 2006, the Office denied modification of its termination of appellant's compensation and medical benefits. The Office found that it had acted in accordance with the Physicians' Directory System (PDS) procedures in selecting Dr. Dara Jamieson to perform the impartial medical specialist examination in this case.³ The Office stated that the record revealed that the Office medical scheduler had contacted eight physicians in appellant's zip code and indicated the reason that a particular physician was bypassed, *i.e.*, the reason that the Office was not able to schedule an examination with that physician. The Office advised that it had checked appellant's list of physicians located in his zip code or adjacent zip codes with the PDS list.⁴ The physicians in appellant's zip code of 19013 who were listed in the 2002 PDS, Drs. Green, Grogan, Leopold and Stafford, were not available to examine appellant. Dr. Green had retired. Dr. Grogan's office advised that he did not perform impartial medical examinations. However, there was no documentation that Dr. Leopold or Dr. Stafford were contacted. A review of the PDS indicated that neither physician had performed an examination for the Office and, "[t]herefore, it can be assumed that they were not being used at the time of the scheduling attempt." The Office stated that the medical scheduler attempted to schedule appellant's examination in neighboring zip codes, working her way north to Philadelphia. The examination was ultimately scheduled with Dr. Jamieson in zip code 19107, 16.30 miles from appellant's residence.⁵

LEGAL PRECEDENT

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.⁶ The Office may not terminate compensation without

¹ Docket No. 05-1403 (issued December 1, 2005); Docket No. 04-330 (issued October 29, 2004). By decision dated June 24, 2002, the Office terminated appellant's compensation and medical benefits effective July 14, 2002.

² Docket No. 03-1353 (issued July 16, 2003).

³ Dr. Jamieson's April 30, 2002 report is of record at R 44-50.

⁴ Appellant had asserted that the Office improperly bypassed numerous physicians whose offices were located in his zip code or zip codes that were closer to his home than the zip code of Dr. Jamieson.

⁵ In its June 3, 2005 decision, the Office indicated that Dr. Jamieson's office was 17.6 miles from appellant's residence.

⁶ *Barry Neutuch*, 54 ECAB 313 (2003); *Lawrence D. Price*, 47 ECAB 120 (1995).

establishing that the disability ceased or that it is no longer related to the employment.⁷ The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.⁹

A physician selected by the Office to serve as an impartial medical specialist should be wholly free to make a completely independent evaluation and judgment. To achieve this, the Office has developed specific procedures for the selection of impartial medical specialists designed to provide safeguards against any possible appearance that the selected physician's opinion is biased or prejudiced. The procedures contemplate that impartial medical specialists will be selected from Board-certified specialists in the appropriate geographical area on a strict rotating basis in order to negate any appearance that preferential treatment exists between a particular physician and the Office.¹⁰ The Federal (FECA) Procedure Manual provides that the selection of referee physicians (impartial medical specialists) is made through a strict rotational system using appropriate medical directories. The procedure manual provides that the PDS should be used for this purpose wherever possible.¹¹ The PDS is a set of stand-alone software programs designed to support the scheduling of second opinion and referee examinations.¹² The PDS database of physicians is obtained from the American Board of Medical Specialties Directory of Board-certified Medical Specialists (ABMS) which contains the names of physicians who are Board-certified in certain specialties.

ANALYSIS

The Board finds that the Office did not follow the Board's previous instructions in its October 29, 2004 and December 1, 2005 orders. The Board instructed the Office to review appellant's list of Board-certified physicians, located in his zip code or adjacent zip codes, and provide an explanation as to why any Board-certified physicians appearing both on his list and the PDS list, if any, were bypassed before Dr. Jamieson was selected. As noted in the Board's orders, the record on appeal did not permit an informed adjudication by the Board on the issue of whether the Office properly followed its procedures in selecting the impartial medical specialist in this case or whether it improperly bypassed qualified physicians whose offices were closer to appellant than Dr. Jamieson's office.

⁷ *Id.*

⁸ *See Del K. Rykert*, 40 ECAB 284 (1988).

⁹ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

¹⁰ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4b (May 2003). *See also Willie M. Miller*, 53 ECAB 697 (2002).

¹¹ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.4b (May 2003).

¹² Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, Chapter 3.500.7 (September 1995, May 2003).

The Office stated that the record revealed that the medical scheduler had contacted eight physicians and indicated the reason that a particular physician was bypassed. The Office advised that it checked appellant's list of physicians located in his zip code or adjacent zip codes with the PDS list. The physicians in appellant's zip code of 19013 who were listed in the 2002 PDS, Drs. Green, Grogan, Leopold and Stafford, were not available. Dr. Green had retired. Dr. Grogan's office advised that he did not perform impartial medical examinations. However, there is no documentation that the Office contacted Dr. Leopold or Dr. Stafford. The Office stated that a review of the PDS indicated that neither physician had performed an examination for the Office and "[t]herefore, it can be assumed that they were not being used at the time of the scheduling attempt." However, the medical scheduler did not contact these physicians, whose offices were in appellant's zip code, to determine whether they would examine him. The medical scheduler moved on to other zip codes before contacting the qualified physicians who were nearest to appellant's residence.¹³ The Office indicated that, on remand, following the Board's December 1, 2005 order, it checked appellant's list of physicians in zip codes adjacent to him with the PDS list. There is no documentation of record that the Office did this. There is also no indication that the Office obtained a current PDS list before selection was made of Dr. Jamieson.

The Board finds that the Office has failed to establish that the selection of Dr. Jamieson was based on correct application of Office procedures. As noted, the procedures provide that impartial medical specialists will be selected from Board-certified specialists in the appropriate geographical area on a strict rotating basis in order to negate any appearance that preferential treatment exists between a particular physician and the Office. As the Office has not established that Dr. Jamieson's selection as an impartial medical specialist was in accordance with Office procedures and Board precedent, her report is not entitled to the special weight of an impartial medical specialist. Therefore, the Office did not meet its burden of proof in terminating appellant's compensation and medical benefits.

CONCLUSION

The Board finds that the Office failed to meet its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective July 14, 2002. On remand the Office should reinstate appellant's compensation and medical benefits retroactive to July 14, 2002.

¹³ The Office stated that the scheduler attempted to schedule appellant's examination in neighboring zip codes, working her way north to Philadelphia. A review of the record shows that only seven physicians outside of appellant's zip code were contacted before the medical scheduler selected Dr. Jamieson. Reasons for bypassing the physicians were provided in five cases. The notation regarding Dr. Thomas Graham indicates that he had been bypassed on two previous occasions. There is no indication as to why he was also bypassed regarding appellant's examination. Dr. Lee Harris was bypassed because his office was 33 miles from appellant's residence.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated September 27, 2006 is reversed.

Issued: May 10, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board